

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications Filed by Frontier	)	
Communications Corporation and Verizon	)	WC Docket 15-44
Communications Inc. for the Partial	)	
Assignment or Transfer of Control of	)	
Certain Assets in California, Florida,	)	
And Texas	)	

**FLORIDA POWER & LIGHT MOTION TO LATE FILE PETITION**

Florida Power & Light (“FPL”), by its attorneys, hereby moves for leave to late file the attached Petition to Deny, attached hereto as Exhibit 1 (“Petition”). FPL attempted to electronically file its Petition with the Commission on April 13, 2015 and believed in good faith that its filing was complete. *See* April 13, 2015 email from Robert J. Gastner, attached hereto as Exhibit 2 (“April 13, 2015 Email”). However, it appears that a technical error occurred and the transaction was not fully completed.

The granting of this motion will not cause prejudice to any of the parties to this proceeding, because FPL has already provided a copy of its Petition via email to all of the relevant parties involved, including Commission staff and each of the applicants. *See* April 13, 2015 email. Thus, each of the relevant parties timely received a copy of the Petition and has had notice of and a complete copy of FPL’s Petition since April 13, 2015.

For the foregoing reasons, FPL respectfully requests leave to electronically file the attached Petition to Deny and have it be deemed timely filed in this matter.

Respectfully submitted,

\s\

---

Charles A. Zdebski

Robert J. Gastner

ECKERT SEAMANS CHERIN &  
MELLOTT, LLC

1717 Pennsylvania Avenue, N.W.  
Suite 1200

Washington, D.C. 20006

Phone: (202) 659-6605

Fax: (202) 659-6699

*Counsel to Florida Power & Light*

April 17, 2015

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of April, 2015, I caused true and correct copies of the foregoing Motion to Late File Petition to be served as follows via electronic mail to:

Dennis Johnson  
Competition Policy Division  
Wireline Competition Bureau,  
dennis.johnson@fcc.gov

David Krech  
Policy Division  
International Bureau  
david.krech@fcc.gov

Kathy Harris  
Mobility Division  
Wireless Transactions Bureau  
kathy.harris@fcc.gov

Linda Ray  
Broadband Division  
Wireless Transactions Bureau  
linda.ray@fcc.gov

Neil Dellar  
Office of General Counsel  
TransactionTeam@fcc.gov

Best Copy and Printing, Inc.  
FCC@BCPIWEB.COM

Kevin Saville  
Joseph Starsick  
Frontier Communications Corporation  
2378 Wilshire Blvd.  
Mound, MN 55364  
Kevin.saville@ftr.com  
Joseph.Starsick@ftr.com

Katharine Saunders  
Assistant General Counsel  
Verizon  
1320 North Court House Road, 9th Floor  
Arlington, VA 22201  
Katharine.saunders@verizon.com

Bryan N. Tramont  
William F. Maher  
Jennifer L. Kostyu  
Wilkinson Barker Knauer, LLP  
2300 N Street, Suite 700  
Washington, D.C. 20037  
202-784-4141  
btramont@wbklaw.com  
wmaher@wbklaw.com  
jkostyu@wbklaw.com

\_\_\_\_\_  
\s/

Robert J. Gastner

# EXHIBIT 1

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications Filed by Frontier	)	
Communications Corporation and Verizon	)	WC Docket 15-44
Communications Inc. for the Partial	)	
Assignment or Transfer of Control of	)	
Certain Assets in California, Florida,	)	
And Texas	)	

**FLORIDA POWER & LIGHT COMPANY'S  
PETITION TO DENY**

Charles A. Zdebski, Esq.  
James C. Falvey, Esq.  
Earl W. Comstock, Esq.  
Eckert Seamans Cherin  
& Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12th Floor  
Washington, D.C. 20006  
Telephone: 202.659.6655  
Fax: 202.659.6699  
*Counsel for Florida Power & Light*

April 13, 2015

## TABLE OF CONTENTS

SUMMARY .....	1
DISCUSSION .....	4
I. THE VERIZON TRANSACTION .....	4
II. THE VERIZON TRANSACTION FAILS TO MEET THE COMMISSION'S STANDARD OF REVIEW.....	5
III. THE PROPOSED TRANSACTION FAILS TO SERVE THE PUBLIC INTEREST BECAUSE VERIZON AND FRONTIER ENGAGE IN SELF-HELP NONPAYMENT IN VIOLATION OF THE COMMISSION'S POLE ATTACHMENT REGIME.....	8
A. The April 2011 Pole Attachment Order Prohibits Self-Help and Requires Carriers to Pay Current Rates Under Existing Contracts.....	9
B. The April 2011 Pole Attachment Order Represents a Continuation of the Commission's Longstanding Policies Prohibiting Self-Help .....	13
IV. THE PROPOSED TRANSACTION FAILS TO SERVE THE PUBLIC INTEREST BECAUSE VERIZON AND FRONTIER HAVE BROKEN THEIR PROMISES TO BENEFIT CONSUMERS THAT UNDERPINNED THE 2011 POLE ATTACHMENT ORDER .....	15
V. VERIZON'S BROKEN PROMISES HAVE HARMED BROADBAND CONSUMERS AND ELECTRIC CUSTOMERS .....	18
VI. IF THE COMMISSION DOES NOT DENY THE VERIZON TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO ENSURE THAT THE TRANSACTION IS IN THE PUBLIC INTEREST .....	22
CONCLUSION .....	23

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications Filed by Frontier	)	
Communications Corporation and Verizon	)	WC Docket 15-44
Communications Inc. for the Partial	)	
Assignment or Transfer of Control of	)	
Certain Assets in California, Florida,	)	
And Texas	)	

**FLORIDA POWER & LIGHT PETITION TO DENY**

Florida Power & Light Company ("FPL"), by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Federal Communications Commission ("Commission" or "FCC") *Public Notice*,<sup>1</sup> hereby files this Petition to Deny the applications for partial assignment or transfer of control of certain assets in California, Florida, and Texas filed by Frontier Communications Corporation and Verizon Communications Inc. (collectively, the "Verizon Transaction").

**SUMMARY**

Verizon and Frontier are seeking the Commission's approval to transfer wireline facilities in Florida that will result in FPL and FPL ratepayers suffering continuing injury due to the fact that Commission approval of the proposed transaction would implicitly condone Verizon's illegal self-help tactic of refusing to pay FPL millions of dollars currently due for attachments of those same wireline facilities to FPL poles throughout Florida and would encourage Frontier to continue such illegal self-help to the detriment of FPL and FPL ratepayers.

---

<sup>1</sup> *Pleading Cycle Established*, Federal Communications Commission Public Notice, WC Docket 15-44 (Mar. 12, 2015).

Verizon and Frontier bear the burden of demonstrating, by a preponderance of the evidence, whether the Verizon Transaction serves the public interest. If the Commission is unable to find that the proposed transaction serves the public interest, *for any reason*, including harm to public utility customers or bad faith on the part of the applicants, the Commission may designate the applications for hearing. The proposed transaction here would allow the merged entity to export practices that: (1) violate Commission precedent precluding self-help; (2) perpetuate broken promises to the Commission that underpinned the Commission's April 7, 2011 Pole Attachment Order; (3) frustrate the Commission's goal of providing advanced telecommunications services to all Americans; and (4) harm both consumers of broadband and customers of electric utilities to the benefit of ILEC shareholders. This Petition shows that for the foregoing reasons the proposed transaction should be denied.

Verizon and Frontier have both filed complaints with the Commission that document their refusal to pay millions of dollars owed to regulated public utilities, including FPL, under joint use agreements for utility poles. However, the Commission has long been clear that companies alleging that a pole attachment rate is not just and reasonable must continue to pay the rate set in the contested pole attachment agreement until such time as the Commission makes a determination regarding that rate and orders, if applicable, a refund of any amounts found to be unreasonable. Approving this acquisition without an enforceable condition that ensures compliance with applicable joint use agreements and the Commission's procedures for review of such agreements will send a clear signal that the Commission's requirements as applied to ILECs in the *April 2011 Pole Attachment Order* are no longer enforceable. This would clearly be contrary to the public interest in that it would encourage Frontier to continue Verizon's self-help practices, and could encourage both companies, as well as others, to turn a blind eye to other

Commission imperatives. If self-help is to be available at all, it must be available to both those attaching communications lines and those who own the poles; however, encouraging such a self-help approach would frustrate other Commission objectives, including further and more expeditious deployment of broadband wireline facilities.

The Commission in the *2011 Pole Attachment Order* reversed 15 years of prior precedent when it determined that it would consider incumbent local exchange carrier complaints regarding the terms and conditions of joint use agreements. It did so in part in reliance on ILEC claims that reducing the joint use rates would result in savings to public utility consumers through lower prices for broadband Internet access service. Verizon has withheld payment of millions of dollars to FPL in Florida alone, yet Florida consumers have seen no reduction in the price of Verizon's broadband service.

Verizon's broken promises to provide concrete benefits to consumers if the Commission would reduce joint use pole attachment rates are established by a large body of publicly available evidence showing that: there have not been any improvements in broadband service and prices as a result of lower joint use rates; Verizon has not increased its efforts to deploy wireline broadband in the last three years; and there is no evidence that Verizon has used the capital saved on joint use rates for the expansion of wireline broadband. Indeed, all of the evidence shows that Verizon is abandoning its efforts to build out wireline broadband.

To ensure that the Verizon Transaction is in the public interest, the Commission should impose the following conditions:

- 1) Frontier shall be required to assume the joint use agreements applicable to the assets subject to the transaction and to make and continue payments under the terms of those joint use agreements -- without engaging in self-help -- unless and

until such time as the terms of those agreements are lawfully terminated or amended by either Commission action or the parties' mutual agreement.

- 2) Verizon and Frontier shall demonstrate to the Commission's satisfaction that each has provided the promised benefits explicated in April 7, 2011 Order and will continue to provide those benefits, to be confirmed in an annual compliance filing.
- 3) Verizon and Frontier will provide a plan that meets the Commission's approval and establishes how the transaction will foster the deployment of advanced wireline broadband telecommunications services.

## **DISCUSSION**

### **I. THE VERIZON TRANSACTION**

The Verizon Transaction includes the transfer to Frontier of: (1) certain assets and customer relationships related to Verizon's provision of local exchange, retail broadband, and video services to residential, small business, and enterprise customers in California, Florida, and Texas; and (2) certain related long distance customer relationships in those areas. To effectuate the transaction, Verizon will form a wholly-owned limited liability company called "Newco." Prior to closing, the ownership interests of Verizon California Inc., Verizon Florida LLC, and GTE Southwest Incorporated (d/b/a Verizon Southwest) will be moved to Newco so that the three companies are wholly-owned direct subsidiaries of Newco. Frontier will then purchase all of the ownership interests of Newco. Upon completion of the transaction, Newco will become a wholly-owned direct subsidiary of Frontier and the three transferred companies will become wholly-owned indirect subsidiaries of Frontier. In addition, certain customers of Verizon Long

Distance LLC in California, Florida, and Texas will be assigned to Frontier America.<sup>2</sup> The application seeks consent to the transfer of control of 1) blanket domestic Section 214 operating authority; 2) international section 214 authorizations; and 3) 134 wireless licenses held by the three Verizon companies. In addition, the application seeks partial assignment of blanket domestic and international Section 214 authority held by Verizon Long Distance LLC to Frontier America with respect to certain long distance customers in Florida, California and Texas.<sup>3</sup>

## **II. THE VERIZON TRANSACTION FAILS TO MEET THE COMMISSION'S STANDARD OF REVIEW**

The Communications Act governs review of this transaction by the Commission. Under Sections 214(a) and 310(d), Verizon and Frontier must show that the proposed transaction serves the public interest, convenience, and necessity.<sup>4</sup> In its transaction analysis, the Commission first determines whether the proposed transaction complies with federal law and the Commission's rules.<sup>5</sup> The Commission then determines whether the transaction will harm the public interest by substantially frustrating or impairing the objectives or implementation of the Communications Act.<sup>6</sup> During its review, the Commission employs a balancing test weighing any potential public interest benefits compared to potential public interest harms.<sup>7</sup> Verizon and Frontier bear the

---

<sup>2</sup> *In the Matter of Verizon Communications Inc. and Frontier Communications Corp. Application for Consent to Partially Assign and Transfer Control of Domestic and International Authorizations Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 15-44 (Feb. 24, 2015), Consolidated Application at 2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>5</sup> *See Applications of AT&T Inc. and Centennial Communications Corp.*, Memorandum Opinion and Order, 24 FCC Rcd. 13915, ¶ 27 (2009). (*AT&T Centennial*).

<sup>6</sup> *See Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17444, ¶ 26 (2008).

<sup>7</sup> *See Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd. 8741, ¶ 9 (2008) ("*CenturyTel/Embarq Order*"). *See also AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶ 19 (2007) (*AT&T Bellsouth*).

burden of demonstrating, by a preponderance of the evidence, whether the Verizon Transaction serves the public interest.<sup>8</sup> If the Commission is unable to find that the proposed transaction serves the public interest, *for any reason*, including harm to public utility customers or bad faith on the part of the applicants, the Commission may designate the applications for hearing.<sup>9</sup>

The Commission has previously found that a transaction could increase the incentives and opportunities to engage in anticompetitive activity by allowing a merged entity to export practices that impede competition from one service to another.<sup>10</sup> For example, in the CenturyTel/Embarq merger, in order to ensure that the increased size of the merged entity did not result in anticompetitive behavior, the Commission included enforceable conditions to the merger.<sup>11</sup>

In an analogous way, the proposed transaction here would allow the merged entity to export practices that: (1) violate Commission precedent precluding self-help; (2) perpetuate broken promises to the Commission that underpinned the Commission's April 7, 2011 Pole Attachment Order ("*April 2011 Pole Attachment Order*");<sup>12</sup> (3) frustrate the Commission's goal of providing advanced telecommunications services to all Americans; and, (4) harm both consumers of broadband and customers of electric utilities to the benefit of ILEC shareholders. This Petition shows that for the foregoing reasons the proposed transaction should be denied.

In the alternative, the transaction should be approved subject strictly to the following conditions: (1) Verizon and Frontier immediately cease engaging in self-help; (2) Verizon and

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> See, e.g., *CenturyTel/Embarq Order*, ¶ 33.

<sup>11</sup> *Id.*

<sup>12</sup> *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report And Order And Order On Reconsideration, 26 F.C.C. Rcd. 5240 (2011) ("*April 2011 Pole Attachment Order*").

Frontier demonstrate to the Commission's satisfaction that each has provided the promised benefits explicated in the April 7, 2011 Order and will continue to provide those benefits, to be confirmed in an annual compliance filing; and (3) Verizon and Frontier provide a plan that meets the Commission's approval and establishes how the transaction will foster the deployment of advanced telecommunications service.

FPL has standing to seek the above relief pursuant to the Commission's rules at 47 CFR §1.939.<sup>13</sup> As of June 9, 2012 Verizon terminated the joint use agreement between FPL and Verizon. Verizon still has approximately 67,000 attachments on FPL's poles as of the date of this filing and continues to enjoy the rights, privileges and benefits of maintaining joint use attachments notwithstanding the termination. Since the termination of the joint use agreement, Verizon has engaged in self-help and illegally withheld millions of dollars due FPL under the terms of the joint use agreement with respect to Verizon attachments that remain on FPL poles, to the benefit of Verizon and the detriment of FPL and FPL's ratepayers. Commission approval of the transaction requested by Verizon and Frontier in this proceeding would result in the transfer of the attachments from Verizon to Frontier, further harming FPL through the tacit approval of Verizon's illegal self-help approach and encouraging continuation of that approach by Frontier. The transfer of the attachments from Verizon to Frontier will be subject to the transfer provision of the now terminated joint use agreement. FPL's ongoing injury could be redressed by the Commission refusing to approve the requested transaction absent agreement by Verizon and Frontier to enforceable commitments to cease engaging in self-help.

---

<sup>13</sup> The Declaration of Maria J. Moncada is attached as Exhibit A to this petition.

### III. THE PROPOSED TRANSACTION FAILS TO SERVE THE PUBLIC INTEREST BECAUSE VERIZON AND FRONTIER ENGAGE IN SELF-HELP NONPAYMENT IN VIOLATION OF THE COMMISSION'S POLE ATTACHMENT REGIME

Verizon and Frontier have both filed complaints with the Commission that document their refusal to pay millions of dollars owed to regulated public utilities, including FPL, under joint use agreements for utility poles.<sup>14</sup> Further, these complaints by both companies are evidence of a deliberate, ongoing effort by both companies to harm consumers by obstructing legal action to collect monies due under valid contracts. The Commission has long been clear that companies alleging that a pole attachment rate is not just and reasonable must continue to pay the rate set in the contested pole attachment agreement until such time as the Commission makes a determination regarding that rate and orders, if applicable, a refund of any amounts found to be unreasonable.<sup>15</sup>

Despite the fact that the Commission, in the *April 2011 Pole Attachment Order*, directly addressed the fact that payments must continue to be made under existing joint use agreements, both Verizon and Frontier have withheld millions of dollars of payments from FPL and other utilities, ostensibly on the basis of that *Order*. This merger application presents an opportunity for the Commission to put an end to that disregard of the Commission's precedent by, at a

---

<sup>14</sup> See, e.g., *In the Matter of Verizon Florida LLC*, Docket No. 14-216, Memorandum Opinion and Order (rel. Feb. 11, 2015) at ¶ 14 ("Florida Power billed Verizon for its attachments to Florida Power's poles in 2011 and 2012 at the rates applicable under the Agreement, namely, \$35.465 per pole for 2011 and \$36.225 per pole for 2012. Verizon paid the invoices in full for the period up to the July 12, 2011 effective date of the Pole Attachment Order. For the period after that date, Verizon applied the New Telecom Rate formula and paid \$8.52 per pole.").

<sup>15</sup> *2011 Pole Attachments Order* at ¶ 111 and n. 655. See also *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, WC 07-35 (rel. Jun. 28, 2007) at ¶ 1 ("The Commission's rules and regulations provide carriers with several mechanisms to address allegations of unreasonable access charges, including tariff investigations and informal and formal complaints. We find that carriers that contend that the access charges of a LEC are unreasonable should use these mechanisms to seek relief and may not engage in self help actions such as call blocking.").

minimum, ensuring that when Frontier assumes Verizon's obligations under existing joint use agreement,<sup>16</sup> all payments due under such agreement have been made at the rates specified in the applicable joint use agreements. If the Commission allows Verizon to pass the baton to Frontier without applying conditions which at a minimum require future payments by Frontier under applicable joint use agreements, the Commission will be condoning implicitly this illegal activity. This is not a case that involves a close judgment call as to Verizon's malfeasance, but rather a clear and deliberate disregard by Verizon of the Commission's rules and orders; Verizon has not been creeping up over the speed limit, but rather deliberately driving on the wrong side of the road. The Commission should assist Frontier by restating clear rules of the road by which Frontier can guide its actions.

**A. The April 2011 Pole Attachment Order Prohibits Self-Help and Requires Carriers to Pay Current Rates Under Existing Contracts**

The Commission directly addressed joint use agreements in the *April 2011 Pole Attachment Order* and found that there was no reason to revisit joint use agreement rates at that time:

The record reveals that incumbent LECs frequently have access to pole attachments pursuant to joint use agreements today. Although some incumbent LECs express concerns about existing joint use agreements, these long-standing agreements generally were entered into at a time when incumbent LECs concede they were in a more balanced negotiating position with electric utilities, at least based on relative pole ownership. As explained above, we question the need to second guess the negotiated resolution of arrangements entered into by parties with relatively equivalent bargaining power. Consistent with the foregoing, the

---

<sup>16</sup> For example, Verizon had a joint use agreement with FPL. Although Verizon has terminated that joint use agreement, it is still obligated to make payments to FPL for existing attachments under the agreement. Frontier will have to assume that agreement (unless Frontier and/or Verizon intends to remove all of the Verizon attachments from FPL's poles prior to closing). But the Commission should prohibit Frontier from continuing Verizon's illegal self-help post-merger.

Commission is unlikely to find the rates, terms and conditions in existing joint use agreements unjust or unreasonable.<sup>17</sup>

As such, there is nothing in the *April 2011 Pole Attachment Order* that relieves Verizon of its obligations under existing contracts and the Commission found that it “is unlikely” to find rates in such existing joint use agreements unjust or unreasonable. But the Commission also directly addressed in the *April 2011 Pole Attachment Order* the *process* by which a carrier like Verizon or Frontier could become entitled to lower rates if it believed that its existing contractual rates were too high. Needless to say, the Commission did not endorse immediate self-help whereby carriers begin withholding payments mandated by existing contracts to the extent such contractual commitments exceed the rate at which Verizon or Frontier thinks they should be entitled to pay. As discussed below, the Commission has consistently forbidden carriers from engaging in such self-help.

Self-help should be equally available or unavailable to all involved. Preferably unavailable. The Commission has consistently found that a carrier that objects to its current contractual rates must continue to pay those rates until such time as it obtains a non-appealable Commission order establishing that such rates are not just and reasonable. The Commission pointed in the *April 2011 Pole Attachment Order* to the potential for an ILEC to terminate its existing contract and seek new arrangements. (In the case of FPL’s contract with Verizon, even upon termination, existing rates apply to existing attachments until those attachments or the poles they are on are no longer considered “joint use” or new rates, terms and conditions are established by the parties or the Commission.) But

---

<sup>17</sup> The Commission made the above pronouncement, subject only to narrow exceptions in particularized circumstances. *April 2011 Pole Attachment Order*, ¶ 216.

the Commission made clear that an ILEC seeking new rates must, like any other carrier, “sign and sue,” *i.e.*, accept and pay the utility-offered rates and seek a true-up after filing a complaint: “we note that the ‘sign and sue’ rule will apply here in a manner similar to its application in the context of pole attachment agreements between pole owners and either cable operators or telecommunications carriers.”<sup>18</sup>

The Commission also reinforced the validity of the “sign and sue” rule for competitive local exchange carriers (“CLECs”) and cable operators that want to attach to utility poles but do not agree that the rates are just and reasonable.<sup>19</sup> The Commission declined to modify section 1.1410 of the Commission’s rules, which effectively requires payment by the CLEC or cable company at higher rates, and then provides for refunds only after a complaint is successfully prosecuted to a final, non-appealable order.<sup>20</sup>

The Commission has consistently supported a regime where rate challenges are channeled through appropriate legal processes rather than through self-help, for CLECs, cable companies, and ILECs alike. If the Commission continues to condone implicitly

---

<sup>18</sup> *April 2011 Pole Attachment Order*, n. 655.

<sup>19</sup> *Id.*, ¶¶ 119-125.

<sup>20</sup> 47 C.F.R. § 1.1410(c). Frontier appears to agree, *See Frontier Communications of the Carolinas LLC v. Duke Energy Carolinas, LLC*, 2013 WL 6151275 (E.D.N.C.) (“7. In the Pole Attachment Order, the FCC established procedures that authorized ILECs, like Frontier, to bring pole attachment complaints before the Commission's Enforcement Bureau against electric companies, like Duke. *Id.* at 5328, 5333-34 (¶¶ 203, 214). The Commission made clear that available remedies include: (1) termination of the rate charged by the electric company; (2) determination and imposition of a different rate; and (3) a refund of prior overpayments by the telephone company. *Id.* at 5334 (¶ 214 n. 647) (citing 47 C.F.R. § 1.1410).”). 7. In the Pole Attachment Order, the FCC established procedures that authorized ILECs, like Frontier, to bring pole attachment complaints before the Commission's Enforcement Bureau against electric companies, like Duke. *Id.* at 5328, 5333-34 (¶¶ 203, 214). The Commission made clear that available remedies include: (1) termination of the rate charged by the electric company; (2) determination and imposition of a different rate; and (3) a refund of prior overpayments by the telephone company. *Id.* at 5334 (¶ 214 n. 647) (citing 47 C.F.R. § 1.1410).”).

the current self-help policies of both Verizon and Frontier by permitting Frontier to continue Verizon's current self-help policies post-merger, it would send a signal that self-help is an approved alternative. The reciprocal signal to electric utilities would then be that a utility that does not receive full payment from a carrier for attachments should simply remove the attachments based on the failure to make payments due under joint use contracts. Establishing such a dynamic would not be in the interest of any party, the Commission or the public.<sup>21</sup>

As the Department of Justice stated when representing the FCC in the *Gulf Power* case, "the cable company may not exercise its right of attachment unless it pays the rate that the utility demands."<sup>22</sup> Or put another way, there's no such thing as a free lunch.

Electric utilities are currently reluctant to remove ILEC attachments. The Commission should therefore continue to provide clear, universal, and forceful direction across the industry through proceedings such as this one that self-help is illegal and will not be tolerated. If the Commission intends to leave this issue for carriers to sort out outside of FCC and other judicial complaint proceedings, utilities should not be expected or forced to continue to provide attachment services to companies that refuse to pay for them.

---

<sup>21</sup> The Commission in fact already touched upon the issue of self-help by electric utilities. It noted that electric utilities were unlikely to engage in self-help by removing ILEC attachments considering that ILECs could possibly then do the same to electric utilities. *April 2011 Pole Attachment Order*, n. 655. The same lack of self-help should be the approach to the monetary terms of a joint use agreement and all parties should abide by the same legal standards. If this is not the Commission's desired result, then it should make clear that all parties are free to engage in self-help as they see fit.

<sup>22</sup> *Gulf Power v. United States*, Case No. 98-2403 (11th Cir.), U.S. Dept. of Justice Civil Division Brief, at 2 (Mar. 29, 1999) ("*DOJ Gulf Power Brief*").

Approving this acquisition without an enforceable condition that ensures compliance with applicable joint use agreements and the Commission's procedures for review of such agreements will indicate that the Commission's requirements as applied to ILECs in the *April 2011 Pole Attachment Order* are no longer enforceable. This would clearly be contrary to the public interest in that it would encourage Frontier to continue Verizon's self-help practices, and could encourage both companies, as well as others, to turn away from other Commission imperatives.

**B. The April 2011 Pole Attachment Order Represents a Continuation of the Commission's Longstanding Policies Prohibiting Self-Help**

When Congress first enacted Section 224 in 1978 the Senate committee considering the legislation made clear that self-help was not to be tolerated by the Commission.<sup>23</sup> The Commission accordingly has had a longstanding policy of requiring carriers to make pole attachment payments unless and until they can demonstrate that rates are unjust and unreasonable. This policy was well articulated by the Department of Justice Civil Division representing the FCC in the *Gulf Power* case.<sup>24</sup> The following are excerpts from one of the DOJ's briefs in the *Gulf Power* case:

- "Thus, in the absence of an FCC adjudication, a cable company seeking pole access must pay the rate that the utility demands."<sup>25</sup> (In this case, the rate that the utility and Verizon negotiated with equal bargaining power.)
- "If the FCC adjudicates a complaint and determines that a pole attachment rate is not just and reasonable, the FCC may order the utility to charge a lower rate. The court of appeals, however, may stay the FCC's rate order pending judicial review. If the court

---

<sup>23</sup> See S. REP. 95-580, 16, 1978 U.S.C.C.A.N. 109, 124 ("While S. 1547, as reported, does not legislate a guarantee of access by CATV systems to utility poles, the Committee recognizes that it is conceivable that a non-telephone utility which currently provides CATV pole attachment space might discontinue such provision simply to avoid FCC regulation. The Committee believes that under S. 1547, as reported, the Commission could determine that such conduct would constitute an unjust or unreasonable practice and take appropriate action on a finding that CATV pole attachment rights were discontinued solely to avoid jurisdiction.").

<sup>24</sup> *Gulf Power v. United States*, 187 F.3d 1324 (11<sup>th</sup> Cir. 1999).

<sup>25</sup> DOJ *Gulf Power Brief* at 2.

enters such a stay, the cable company must continue to pay the rate that the utility demands, pending the outcome of judicial review.”<sup>26</sup>

- “And if the court concludes that the rate set by the FCC is constitutionally inadequate, the court may enjoin the FCC from enforcing its rate order.”<sup>27</sup>
- “As a consequence, the cable company would either have to forgo its right of attachment or else pay the rate that the utility demanded (unless and until the FCC issued a new rate order consistent with the constitutional and statutory requirements).”<sup>28</sup>
- “Section 224(f) thus imposes a self-executing duty on utilities to provide access to their poles (with certain exceptions).”<sup>29</sup>
- “Nothing in § 224, however, imposes a comparable duty on utilities to provide access at a particular rate.”<sup>30</sup> (Such as the below-contract rate currently paid by Verizon.)

As such, the DOJ and the FCC have consistently taken the position that self-help nonpayment is not an option for a carrier that wants to maintain attachments on a utility’s poles. The Commission should again send a clear signal in this proceeding that Frontier cannot continue the policies of Verizon by engaging in self-help nonpayment.

The FCC’s prohibition on self-help nonpayment in the pole attachment context is consistent with a long line of FCC precedent precluding self-help by carriers.<sup>31</sup> The Commission should continue to enforce its preclusion on self-help practices by attaching conditions to

---

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2-3.

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., *Business WATS, Inc. v. AT&T Co.*, Memorandum Opinion and Order, 7 FCC Rcd. 7942, ¶ 2 (Com. Car. Bur. 1992) (“a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier’s applicable tariffed charges and regulations.”); *Carpenter Radio Company*, Memorandum Opinion and Order, 70 FCC 2d 1756 ¶ 6 (1979) (“a customer has a legal obligation to pay all tariffed rates for telecommunications services . . . until such time as these rates are found unlawful by the Commission or a court of competent jurisdiction.”).

Frontier's acquisition of Verizon's poles and other assets to require that Frontier must make payments to utilities at the rates contained in applicable joint use agreements.<sup>32</sup>

**IV. THE PROPOSED TRANSACTION FAILS TO SERVE THE PUBLIC INTEREST BECAUSE VERIZON AND FRONTIER HAVE BROKEN THEIR PROMISES TO BENEFIT CONSUMERS THAT UNDERPINNED THE 2011 POLE ATTACHMENT ORDER.**

The Commission in the *2011 Pole Attachment Order* reversed 15 years of prior precedent when it determined that it would consider incumbent local exchange carrier complaints regarding the terms and conditions of joint use agreements. It did so in part in reliance on ILEC claims that reducing the joint use rates would result in savings to public utility consumers through lower prices for broadband Internet access service. The Commission even said that it "would be concerned if these consumer benefits were not realized."<sup>33</sup> Verizon has withheld payment of millions of dollars to FPL in Florida alone, yet there is no evidence that Florida consumers have seen a reduction in the price of Verizon's broadband service. Frontier, too, has withheld payment of millions of dollars in joint use payments to multiple electric utilities, yet there is similarly no evidence that any Frontier customers have seen a reduction in the price of broadband service.

In the *April 2011 Pole Attachment Order*, the FCC based its fundamental sea change in jurisdictional interpretation on the belief that rate regulation would provide more ubiquitous broadband by fostering the deployment of "advanced telecommunications" to underserved areas.

---

<sup>32</sup> The Commission has previously imposed conditions on similar transactions between Verizon and Frontier. See *In the Matter of Applications Filed by Frontier Commc'ns Corp. & Verizon Commc'ns Inc. for Assignment or Transfer of Control*, 25 F.C.C. Rcd. 5972, 5996 (2010) ¶ 63 ("IT IS FURTHER ORDERED, as a condition of this grant and pursuant to section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), that Verizon and Frontier shall comply with the conditions set forth in Appendices C and D of this Order.").

<sup>33</sup> *April 2011 Pole Attachment Order*, ¶ 208.

The Commission stated:

actions to reduce input costs, such as pole rental rates, can expand opportunities for investment, especially in combination with other actions, which is particularly important given the up to 24 million Americans that do not have access to broadband today.<sup>34</sup>

The ILEC industry claimed “that, in aggregate, they annually pay pole attachment rates that are \$320 to \$350 million greater than they would pay at the cable rate.”<sup>35</sup> In exchange for receiving rate regulation from the Commission, the ILECs promised five specific benefits:

- (1) reduced demand on the universal service fund arising from reduced incumbent LEC costs;
- (2) automatic flow-through of cost reductions to the regulated rates of rate-of-return of incumbent LECs;
- (3) use of cost savings to improve service and/or lower prices for broadband services in areas with competition;
- (4) increased broadband deployment in areas where incumbent LECs currently do not provide broadband due to the improved business case; and
- (5) a source of capital for expansion.<sup>36</sup>

Nearly four years to the day since the *April 2011 Pole Attachment Order*, neither Verizon nor Frontier has provided any evidence of any one of the five promised benefits. It is safe to say that if there were any such benefits, Verizon and Frontier would have made sure the Commission and public knew about them. This is directly contrary to the Commission’s directive and express statements.

---

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

In the *April 2011 Pole Attachment Order*, the Commission stated:

We expect these promised consumer benefits to occur, and we encourage incumbent LECs to provide data to the Commission on an ongoing basis demonstrating the extent to which these benefits are being realized. We would be concerned if these consumer benefits were not realized. We will continue to monitor the outcomes of this Order, and **in the absence of evidence that expected benefits are being realized**, we may, among other things, revisit our approach to this issue.<sup>37</sup>

There is no record that, despite the Commission's unambiguous goal to "encourage" submission of such data, Verizon and Frontier have provided data "demonstrating the extent to which these benefits are being realized." Despite the Commission's ongoing attention to each of the five areas above, Verizon and Frontier have ignored its directive, and have not reported or shown evidence of any of the five promised benefits.

On the other hand, Verizon's retention of funds has a direct adverse impact on the regulated utility to which it has attached its wires and, more importantly, on the regulated utility ratepayers. For example, a reduction in the revenue received from Verizon for pole rental adversely impacts FPL's retail rates. FPL's joint use revenues are recorded pursuant to the Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts ("USofA") in Account No. 454 as Other Electric Revenues. These revenues are netted against the expenses associated with operating the electric distribution system in developing the revenue requirement used in determining the rates to be paid by FPL's retail customers. Joint use rental revenue affects FPL's retail revenue requirement. This is required by the Florida Public Service Commission ("FPSC") pursuant to Order No. 8721, Docket No. 780326-PU, at 2 (Feb. 16, 1979) (quoting *GTE v. NY PSC*, 406 N.Y.S.2d 909, 911-12 (1978) ("The revenues that a utility receives

---

<sup>37</sup> *Id.*

from renting pole space to cable television operators must be taken into account by the Public Service Commission in fixing utility rates. Pole attachment revenues are properly used to offset the utility costs that are reflected in the rates paid by utility customers.”)).<sup>38</sup> There is therefore no doubt that Verizon’s withholding of millions of dollars of joint use payments directly impacts FPL and the people of Florida who rely on FPL’s service.<sup>39</sup>

## **V. VERIZON'S BROKEN PROMISES HAVE HARMED BROADBAND CONSUMERS AND ELECTRIC CUSTOMERS.**

Verizon’s broken promises to provide concrete benefits to consumers if the Commission would reduce joint use pole attachment rates are established by a large body of publicly available evidence showing that: there have not been any improvements in broadband service and prices as a result of lower joint use rates; Verizon has not increased its efforts to deploy wireline broadband in the last three years; and there is no evidence that Verizon has used the capital saved on joint use rates for the expansion of wireline broadband. Indeed, all of the evidence shows that Verizon is abandoning its efforts to build out wireline broadband. Verizon, in fact, has made clear that it intends to be out of the wireline business within the next ten years, conveying this clear intent to regulated utilities in negotiations over joint use issues and explaining that Verizon no longer wants to be a pole owner. Indeed, the current proposed transaction proves this point. While FPL fully supports forward technological progress for the benefit of consumers, the price

---

<sup>38</sup> The Senate Committee report accompanying the legislation enacting section 224 explicitly recognized FERC and State public utility commission ratemaking proceedings as appropriate sources for determining inputs for pole attachment rates. *See* S. REP. 95-580, 22, 1978 U.S.C.C.A.N. 109, 130 (“In determining the lawfulness of a utility’s rate, terms, and conditions for CATV pole attachments, the Commission may accept in whole or in part the depreciation rates, property valuations, systems of accounts, rates of return and the like established or determined by any State or local agency or any agency of the Federal government.”).

<sup>39</sup> Unfortunately, because of the fluid nature of Florida’s growing population, it is likely that absent prompt Commission action the FPL customers who have been harmed by Verizon’s self-help will not be the same ones who are ultimately affected by the relief afforded by the Commission.

of that progress should not be the abandonment of wireline customers, contractual obligations and promises to the Commission. Verizon's transition to a fully wireless business may be encouraged and fostered, but it must first ensure that its wireline house is in order.

However, publicly available evidence as to Verizon's current approach to its transition abounds. In New York state, on May 3, 2013, in the aftermath of Hurricane Sandy, Verizon took the opportunity caused by hurricane damage to attempt to shed its obligation to provide wireline service in its New York service territory, and replace it with wireless Voice Link service in the event that its facilities were destroyed or if the company found that offering only wireless service was otherwise "reasonable." Voice Link service does not provide broadband.<sup>40</sup> Verizon similarly planned to move customers in Florida from wireline service to wireless service. It seeks to provide wireless service not only in communities where storms damaged Verizon's wires, "but also in other areas where it would rather not continue to maintain the old copper wires."<sup>41</sup>

In fact, Verizon's efforts to eliminate wireline service in New York became so egregious that New York State Attorney General Eric T. Schneiderman filed petitions to stop Verizon. In an April 25, 2012 petition to the New York State Public Service Commission, Attorney General Schneiderman sought to stop Verizon's efforts based on evidence that Verizon was disregarding landline service as more and more wireline phone customers switched to wireless service,

---

<sup>40</sup> *Tariff filing by Verizon New York Inc. to introduce use of wireless technology as an alternative to repairing damaged facilities*, Order Conditionally Approving Tariff Amendments In Part, Revising In Part, And Directing Further Comments, NYPSC Case No. 13-C-0197 (May 16, 2013) ("Digital Subscriber Line (DSL) services will not be available [with Voice Link].").

<sup>41</sup> See *Wireless Home Phones: A Plan Strikes a Chord* (May 20, 2013) - <http://www.nytimes.com/2013/05/21/nyregion/verizon-hopes-to-nudge-some-from-wired-to-wireless.html> (last visited March 31, 2014).

thereby allowing Verizon to focus on its far more lucrative wireless service.<sup>42</sup> The Petition filed by AG Schneiderman went on to state:

[T]elephone competition in New York is not robust, and at best can be characterized as a duopoly. Moreover, Verizon's own actions have demonstrated a disinterest in continuing to compete for wireline customers or invest in traditional telephone service. Instead, the company's resources and management focus is concentrated on its wireless affiliate, to the detriment of Verizon's wireline customers. For too many years, Verizon has steadily reduced the workforce needed for outside plant maintenance and telephone repair . . . .<sup>43</sup>

Verizon then sought to push its wireless Voice Link service to New York's Catskill region. AG Schneiderman again filed a petition with the New York Public Service Commission, "asking that Verizon be blocked from 'illegally installing' its Voice Link service for customers in the Catskill region because the Voice Link "wireless system cuts Internet access, home alarm systems and is susceptible to power failures . . . ." <sup>44</sup>

There should be no doubt, however, that Verizon's strategy to abandon wireline service in favor of wireless service extends beyond New York and Florida and beyond storm-damaged communities and rural areas. Indeed, that strategy includes virtually all of Verizon's service territory in, for example, the state of New Jersey. There, Verizon recently made another bold effort to end wireline broadband build out.

In 1993 the New Jersey Board of Public Utilities ("NJ BPU") agreed to Verizon's "Opportunity New Jersey" (ONJ) petition for alternative rate regulation under which "Verizon

---

<sup>42</sup> See <http://www.nbcnewyork.com/news/local/Verizon-Complaints-Telephone-New-York-Attorney-General-Action-149160245.html> (last visited March 31, 2014); Petition of Attorney General Eric T. Schneiderman to Modify the Verizon Service Quality Improvement Plan ("AG Schneiderman Petition"), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7bE46EDB40-99B2-4664-8BE4-A9646D09BBBF%7d> (last visited March 31, 2014).

<sup>43</sup> AG Schneiderman Petition at 31.

<sup>44</sup> See Verizon Rural Service Swap Must Stop, New York Says, <http://www.bloomberg.com/news/2013-06-26/verizon-rural-service-swap-must-stop-new-york-says.html> (last visited March 31, 2014).

was required to achieve ONJ in its entirety, including full broadband capability, by the year 2010, specifically, switching technologies matched with transmission capabilities to support data rates up to 45,000,000 bits per second and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive video signals with complete deployment in 2010.”<sup>45</sup> Verizon failed to honor its commitment to build out wireline broadband services and on March 12, 2012 the NJ BPU issued an Order to Show Cause directing Verizon NJ “to show cause why the Board should not find that it failed to comply with the PAR Orders in providing full broadband capability in its service territory by 2010 . . . .”<sup>46</sup>

Verizon, quite simply, has failed to build out wireline broadband in New Jersey because Verizon has no interest in doing so. Instead, Verizon has reached a settlement via Stipulation with the NJ BPU to relieve Verizon of its obligation to build out wireline broadband to New Jersey residents. That stipulation has been challenged in court, but if ultimately upheld Verizon will be allowed to satisfy any broadband build out requirements if a minimum of 35 customers in a defined service area who do not currently have broadband from cable service providers or “access to 4G-based wireless service” request broadband service from Verizon and Verizon provides broadband within nine months, including by “4G-based wireless” service.<sup>47</sup> As the sale of wireline facilities in Florida, Texas and California in the applications in this proceeding clearly demonstrate, Verizon obviously is no longer interested in the wireline broadband business and sees its financial future in the wireless industry.

---

<sup>45</sup> *In the Matter of Verizon New Jersey, Inc.’s Alleged Failure to Comply with Opportunity New Jersey Commitments*, Order to Show Cause, State of New Jersey Board of Public Utilities, Docket No. TO12020155 (Mar. 12, 2012) attached Stipulation of Settlement at 2, available at <http://www.nj.gov/bpu/pdf/boardorders/2012/20120312/3-12-12-4B.pdf> (viewed Apr. 13, 2015).

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.* at 3-4 (emphasis added).

**VI. IF THE COMMISSION DOES NOT DENY THE VERIZON TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO ENSURE THAT THE TRANSACTION IS IN THE PUBLIC INTEREST**

The Commission has previously asserted its authority to impose conditions on a transaction to ensure that the public interest is served by the transaction:

The Commission has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction. Indeed, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest. Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.<sup>48</sup>

To ensure that the Verizon Transaction is in the public interest, the Commission should impose the following conditions:

- 1) Frontier shall be required to assume the joint use agreements applicable to the assets subject to the transaction and to make and continue payments under the terms of those joint use agreements -- without engaging in self-help -- unless and until such time as the terms of those agreements are lawfully terminated or amended by either Commission action or the parties' mutual agreement.
- 2) Verizon and Frontier shall demonstrate to the Commission's satisfaction that each has provided the promised benefits explicated in April 7, 2011 Order and will continue to provide those benefits, to be confirmed in an annual compliance filing.

---

<sup>48</sup> BellSouth/AT&T Order, ¶ 22.

- 3) Verizon and Frontier will provide a plan that meets the Commission's approval and establishes how the transaction will foster the deployment of advanced wireline telecommunications and broadband services.

### CONCLUSION

In light of Verizon and Frontier's nonpayment in connection with joint use agreements and broken series of promises to the Commission, the Verizon Transaction would perpetuate and exacerbate detrimental and unlawful practices by these two companies. As such, approval of the Verizon Transaction while these practices are ongoing is not in the public interest. If the Commission does approve the Verizon Transaction, it should only do with FPL's proposed conditions in order to ensure the transaction is in the public interest.

Respectfully submitted,



---

Charles A. Zdebski, Esq.  
James C. Falvey, Esq.  
Earl W. Comstock, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12th Floor  
Washington, D.C. 20006  
Telephone: 202.659.6655  
Fax: 202.659.6699  
*Counsel for Florida Power & Light.*

April 13, 2015

# EXHIBIT A

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications Filed by Frontier	)	
Communications Corporation and Verizon	)	WC Docket 15-44
Communications Inc. for the Partial	)	
Assignment or Transfer of Control of	)	
Certain Assets in California, Florida,	)	
And Texas	)	

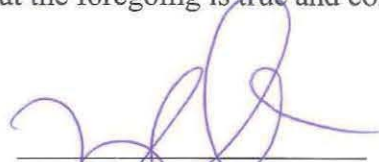
**DECLARATION OF MARIA J. MONCADA  
IN SUPPORT OF FLORIDA POWER & LIGHT  
PETITION TO DENY**

I hereby declare under penalty of perjury that:

1. My name is Maria Moncada. I am employed as an attorney with Florida Power & Light Company. My primary office is in Juno Beach, Florida.
2. I make this declaration in support of Florida Power & Light Company's Petition to Deny which is being filed in the Federal Communications Commission proceeding entitled *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for the Partial Assignment or Transfer of Control of Certain Assets in California, Florida, and Texas*, WC Docket No. 15-44. I have reviewed the Petition and make this Declaration based on my review.
3. Any allegations of fact contained in the Petition, except those as to which official notice may be taken, are true and correct to the best of my personal knowledge and belief, and as to those matters of which official notice may be taken, I believe them to be true.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 13, 2015.



---

Maria J. Mercada  
Principal Attorney  
Florida Power & Light Company

April 13, 2015

# EXHIBIT 2

**From:** Robert J. Gastner  
**To:** [Saville, Kevin](#); [Starsick, Joseph](#); "[fcc@bcpiweb.com](#)"; "[dennis.johnson@fcc.gov](#)"; "[david.krech@fcc.gov](#)"; "[linda.ray@fcc.gov](#)"; "[transactionteam@fcc.gov](#)"; "[katharine.saunders@verizon.com](#)"; "[btramont@wbklaw.com](#)"; "[wmaher@wbklaw.com](#)"; "[Kostyu, Jennifer](#)"  
**Cc:** [Laura Englehart](#); [Charles A. Zdebski](#) ([czdebski@eckertseamans.com](#))  
**Subject:** WC Docket No. 15-44; FPL Petition to Deny  
**Date:** Monday, April 13, 2015 9:32:00 PM  
**Attachments:** [FPL - PETITION TO DENY \[AS FILED\] \(N0211433\).pdf](#)

---

Good Evening:

Please find attached to this email Florida Power & Light's Petition to Deny as filed earlier today with the Federal Communications Commission in WC Docket No. 15-44.

Sincerely,

**Robert J. Gastner, Esq.**  
Telecommunications | Litigation | Energy  
**ECKERT SEAMANS CHERIN & MELLOTT, LLC**

1717 Pennsylvania Avenue, N.W. • 12<sup>th</sup> Floor • Washington, DC 20006  
Direct (202) 659.6674 | Fax (202) 659.6699  
[rgastner@eckertseamans.com](mailto:rgastner@eckertseamans.com)



The information transmitted by this email (including any attachments) is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this message in error, please contact the sender and delete the material from your computer. To ensure compliance with requirements imposed by the IRS, we inform you that any discussion of tax issues in this communication (including any attachments) was not intended or written to be used and cannot be used (i) to avoid any tax-related penalty or (ii) to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm's tax partners if you have any questions regarding tax advice.